



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,646	02/24/2004	Lewis George Gradon	1171/41687/139	2372
279	7590	03/29/2006		EXAMINER
TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD. 105 WEST ADAMS STREET SUITE 3600 CHICAGO, IL 60603			DIXON, ANNETTE FREDRICKA	
			ART UNIT	PAPER NUMBER
			3743	
				DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/785,646	GRADON ET AL.
	Examiner	Art Unit
	Annette F. Dixon	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 January 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/24/04
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

37 CFR 1.105 REQUIREMENT FOR INFORMATION

1. Applicant (or the assignee of this application if the assignee has undertaken the prosecution of the application is required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
2. There are numerous other co-pending applications and issued patents, which disclose and claim very similar and/or identical subject matter. In accordance with 37 CFR 1.105 and MPEP 704.11(a) subsection G, applicant (or the assignee) is respectfully requested to disclose all co-pending applications and related patents (please see the non-exhaustive list below of applications and issued patents that the USPTO believes may be related) and identify the specific claims of those applications and/or patents which may present double patenting issues with the instant application claims. This requirement is reasonably necessary to examination because, based on an initial review of the applications, there is a significant degree of overlap in claimed subject matter, thus requiring an analysis of commonality of claimed subject matter to determine patentability under 35 USC 101 double patenting and/or obviousness type double patenting. For example:
3. a) **Claims 1-3 and 6-7** of the *current application*, 10/785,646, differ from Claims 1, 3, 5, 10-12 of *copending application*, 10/395,446 in only the obvious variation that the current application applies an interface for delivering pressurized gases to a user; while

the co-pending application applies a device for delivering supply gases to a user.

Regardless, both applications incorporate the use of a housing, a headrest with a bridge member and nasal mask to provide a user with gas.

4. c) **Claims 1 and 2** of the *current application*, 10/785,646, differ from Claims 1 and 2 of *patent*, 6,832,610, in only the obvious variation that the current application applies an interface for delivering pressurized gases to a user; while the patent applies a device for delivering supply gases to a user. Regardless, both applications incorporate the use of a patient interface and a forehead rest with a deformable bridge member to provide a user with gas.

5. d) **Claims 1-3 and 6-7** of the *current application*, 10/785,646, differ from Claims 1, 3, 5, 10-12 of *copending application*, 10/297,951 in only the obvious variation that the current application applies an interface for delivering pressurized gases to a user; while the co-pending application applies a device for delivering supply gases to a user.

Regardless, both applications incorporate the use of a housing, a headrest with a bridge member and nasal mask to provide a user with gas.

6. e) **Claims 1-3 and 6-7** of the *current application*, 10/785,646, differ from Claims 1-3, and 6 of *copending application*, 10/487,518 in only the obvious variation that the current application applies an interface for delivering pressurized gases to a user; while the co-pending application applies a device for delivering supply gases to a user.

Regardless, both applications incorporate the use of a housing, a headrest with a bridge member and nasal mask to provide a user with gas.

7. f) **Claims 1-3 and 6 of the *current application*, 10/785,646, differ from Claims 1-4 of *copending application*, 10/268,869** in only the obvious variation that the current application applies an interface for delivering pressurized gases to a user; while the co-pending application applies a device for delivering supply gases to a user. Regardless, both applications incorporate the use of a housing, a headrest with a bridge member and nasal mask to provide a user with gas.

8. g) **Claims 1 –3, and 6-7 of the *current application*, 10/785,646, differ from Claims 1-3 and 16 of *patent*, 6,789,541,** in only the obvious variation that the current application applies an interface for delivering pressurized gases to a user; while the patent applies a device for delivering supply gases to a user. Regardless, both applications incorporate the use of a patient interface and a forehead rest with a deformable bridge member to provide a user with gas.

9. Because the applicant (or the assignee) is presumably far more cognizant of the contents of the claims in these applications than any Office staff, and has access to the source documents by which such comparison could be done better than within the Office, it is reasonable to require the applicant to provide the information needed to determine the commonality among the claims.

10. Should applicant (or the assignee) believe that Double Patenting exists, then applicant (or the assignee) is invited to file Terminal Disclaimers and/or amend the currently pending claims in the interest of expediting the prosecution of the current application. Applicant (or the assignee) should note that a terminal disclaimer is

effective to overcome an obvious type double patenting reject, but will not overcome a "same type" double patenting rejection under 35 U.S.C. § 101.

11. Non-exhaustive list of possible related co-pending applications and patents:

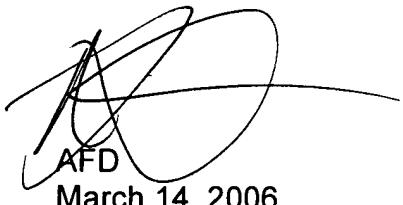
09/881394	10/692399
09/881633	10/785646 Application in Question
09/961743	10/886443
10/072271	10/916700
10/218370	10/970959
10/237833	11/198072
10/267279	D504947
10/268869	D479876
10/268870	6997186
10/278317	6951218
10/293637	6892729
10/293759	6832610
10/297951	6820617
10/331431	6789541
10/395446	6701926
10/456661	6694974
10/487518	6679257
10/489143	6662803
10/495070	6615834
10/495092	6349722
10/518331	6272933
10/646434	6050260
10/664385	5468961
10/675198	

12. This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

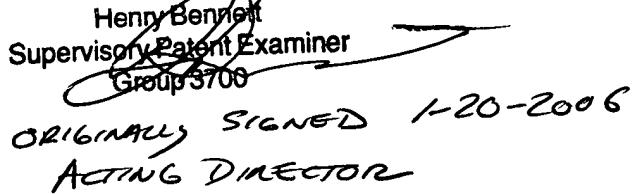
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AFD
March 14, 2006



Henry Bennett
Supervisory Patent Examiner
Group 3700
ORIGINALLY SIGNED 1-20-2006
ACTING DIRECTOR

DETAILED ACTION

Response to Arguments

1. The amendment filed on January 10, 2006, has been entered. Examiner acknowledges **Claims 1-14** are pending in this application, with **Claims 1, 4 and 5** having been amended, and **Claims 8-14** having been newly added. In addition, Examiner acknowledges receipt of a certified copy of the priority document on January 3, 2006.
2. Applicant's arguments filed January 10, 2006, have been fully considered but they are not persuasive. Specifically regarding Applicant's argument of the "width of the bridge member," Examiner acknowledges the newly recited limitations to be simply added as negative limitations to overcome the prior art. As such these negative limitations have not been given patentable weight, as it would be obvious to insure the breathing assistance apparatus did not interfere with the user's line of vision.
3. Applicant's arguments with respect to **Claims 8-14** have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. **Claims 1-7** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter,

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

6. Specifically, **Claim 1-7** now recite the claim limitation of “a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user’s eyes.” However, the originally filed disclosure does not provide evidence that Applicant possessed the newly claimed invention at the time the application was filed, 24 February 2004. In fact, the original specification of the instant invention discloses “a bridge member (532) that is narrow with parallel sides” (Please see Paragraph 0048). Applicant is reminded “any negative limitation or exclusionary proviso must have a basis in the original disclosure.” (Please see MPEP §2173.05(i).) There is no specific recitation or support for a “width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member” in the specification as originally filed, 24 February 2004, despite the disclosure of Figures 7 and 8. Therefore, the subject matter added to **Claims 1-7** is considered a negative limitation because Applicant is attempting to claim the invention by countering the prior art of record with out proper and conclusive support in the disclosure as originally filed.

7. **Claims 8-14** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No amendments may introduce new matter into the disclosure of an application after its filing date. See MPEP §608.04.

8. Specifically, **Claims 8-14** now recite the claim limitation "the bridge member substantially opposite to the region where the forehead rest is mounted;" however, the originally filed disclosure does not provide evidence that Applicant possessed the newly claimed invention at the time the application was filed. In fact, the original specification of the instant invention discloses "extending away from the forehead" (Please see Paragraph 0048). There is no specific recitation or support for "the bridge member substantially opposite to the region where the forehead rest is mounted" in the original application as filed, 24 February 2004. Therefore, the subject matter added to **Claims 8-14** is considered new matter and must be canceled from the claims. See *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977); *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), aff'd mem., 738 F.2d 453 (Fed. Cir. 1984); and *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. **Claims 1-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwok et al (US 6,532,961).

12. **As to Claim 1**, Kwok et al teaches an interface for delivering pressurized gases to the user comprising a housing **17** configured to receive gases and deliver them to a user, a forehead rest **10,12** having a single area of contact with the user's forehead and a bridge member **14** on which the forehead rest is mounted and which extends between the forehead rest and said housing, wherein a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user's eyes.

13. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **Claim 1**, Applicant recites, "thereby allowing a substantially unrestricted view for a user's eyes." Kwok et al discloses an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Kwok et al is utilized for delivering pressurized gases to a user. This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in apparatus claims. While features of an apparatus may be recited either structurally or

functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (Please see MPEP §2114). Regarding Applicants recitation of claim limitation “a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user’s eyes,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user’s line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

14. **As to Claim 2**, Kwok et al teaches an interface wherein said bridge member is adjustable or configurable in orientation with respect to the housing (**See Col. 5**).

15. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **Claim 2**, Applicant recites, “thereby allowing a substantially unrestricted view for a user’s eyes.” Kwok et al discloses an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Kwok et al is utilized for delivering pressurized gases to a user. This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in apparatus claims. While features of an apparatus may be recited either structurally or

functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (Please see MPEP §2114). Regarding Applicants recitation of claim limitation “a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user’s eyes,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user’s line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

16. **As to Claim 3**, Kwok et al teaches an interface wherein said bridge member includes a pivoting engagement to said housing (**See Col. 5**).

17. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **Claim 3**, Applicant recites, “thereby allowing a substantially unrestricted view for a user’s eyes.” Kwok et al discloses an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Kwok et al is utilized for delivering pressurized gases to a user. This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in apparatus claims. While features of an apparatus may be recited either structurally or

functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (Please see MPEP §2114). Regarding Applicants recitation of claim limitation “a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user's eyes,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user's line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

18. **As to Claim 4**, Kwok et al teaches an interface wherein said bridge member has two substantially parallel sides (**See Col. 1**).

19. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **Claim 4**, Applicant recites, “thereby allowing a substantially unrestricted view for a user's eyes.” Kwok et al discloses an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Kwok et al is utilized for delivering pressurized gases to a user. This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in apparatus claims. While features of an apparatus may be recited either structurally or

functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (Please see MPEP §2114). Regarding Applicants recitation of claim limitation “a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user’s eyes,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user’s line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

20. **As to Claim 5**, Kwok et al teaches an interface wherein said bridge member includes attachment points **26** for headgear, said attachment points lying in an approximately mid saggital plane.

21. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **Claim 5**, Applicant recites, “thereby allowing a substantially unrestricted view for a user’s eyes.” Kwok et al discloses an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Kwok et al is utilized for delivering pressurized gases to a user. This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in

apparatus claims. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (Please see MPEP §2114). Regarding Applicants recitation of claim limitation “a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user’s eyes,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user’s line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

22. **As to Claim 6**, Kwok et al teaches an interface wherein said interface is a mask (See Col. 4, lines 23-39).

23. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **Claim 6**, Applicant recites, “thereby allowing a substantially unrestricted view for a user’s eyes.” Kwok et al discloses an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Kwok et al is utilized for delivering pressurized gases to a user. This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in

apparatus claims. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (Please see MPEP §2114). Regarding Applicants recitation of claim limitation "a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user's eyes," Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user's line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

24. **As to Claim 7**, Kwok et al teaches an interface wherein said mask is a nasal mask (**See Col. 4, lines 23-39**).

25. Examiner notes that Applicant has essentially claimed a statement of intended use. Specifically, in **Claim 7**, Applicant recites, "thereby allowing a substantially unrestricted view for a user's eyes." Kwok et al discloses an apparatus in which the claimed functional limitation can inherently be performed since the apparatus of Kwok et al is utilized for delivering pressurized gases to a user. This recitation is a statement of intended use utilizing functional language, which may not be given patentable weight in

apparatus claims. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. (Please see MPEP §2114). Regarding Applicants recitation of claim limitation "a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member thereby allowing a substantially unrestricted view for a user's eyes," Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user's line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

26. **As to Claim 8**, Kwok et al teaches an interface for delivering pressurized gases, wherein the attachment points **26** are positioned on the bridge member substantially opposite to the region where the forehead rest is mounted, the attachment points substantially symmetrically spaced either side of the mid sagittal plane and wherein the distance between the attachment points is substantially no greater than the width of the forehead rest.

27. Regarding Applicants recitation of claim limitation "no greater width than the width of the forehead rest," Applicant does not expressly disclose the aforementioned

claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user's line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

28. **As to Claim 9**, Kwok teaches an interface comprising a housing **17** configured to receive gases and deliver them to the user, a forehead rest **10 and 12**, having a single area of contact with the user's forehead, a bridge member **14** on which the forehead rest is mounted and which extends between the forehead rest and said housing, and attachment points **26** for headgear, said attachment points lying in an approximately mid sagittal plane and positioned on the bridge member substantially opposite to a region where the forehead rest is mounted, the attachment points substantially symmetrically spaced either on either side of the mid sagittal plane and wherein a distance between the attachment points is substantially no greater than a width of the forehead rest.

29. Regarding Applicants recitation of claim limitation "no greater width than the width of the forehead rest," Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user's line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or

serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

30. **As to Claim 10**, Kwok et al teaches an interface wherein said bridge member is adjustable or configurable in orientation with respect to said housing. (**See Col. 5**).

31. Regarding Applicants recitation of claim limitation “no greater width than the width of the forehead rest,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user’s line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

32. **As to Claim 11**, Kwok et al teaches an interface wherein said bridge member includes a pivoting engagement to the housing. (**See Col. 5**).

33. Regarding Applicants recitation of claim limitation “no greater width than the width of the forehead rest,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user’s line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or

serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

34. **As to Claim 12**, Kwok et al teaches an interface wherein bridge member having two substantially parallel sides. (**See Col. 1**).

35. Regarding Applicants recitation of claim limitation "no greater width than the width of the forehead rest," Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user's line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

36. **As to Claim 13**, Kwok et al teaches an interface wherein the interface is a mask. (**See Col. 4, Lines 23-39**).

37. Regarding Applicants recitation of claim limitation "no greater width than the width of the forehead rest," Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user's line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that

the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

38. **As to Claim 14**, Kwok et al teaches an interface wherein the mask is a nasal mask. (See Col. 4, Lines 23-39).

39. Regarding Applicants recitation of claim limitation “no greater width than the width of the forehead rest,” Applicant does not expressly disclose the aforementioned claim limitation. Furthermore, it would have been obvious to one having ordinary skill in the art to design a breathing apparatus that would enable the user’s line of sight to be unobstructed during use of the apparatus. Moreover, Applicant has not asserted that the specific design recited provides a particular advantage, solves a stated problem or serves a purpose different from that of maintaining an unobstructed line of sight during operation of the device, thus the use of a bridge member width lacks criticality in its design and is simply a design choice by the Applicant.

Conclusion

40. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6796308, and 6196223.

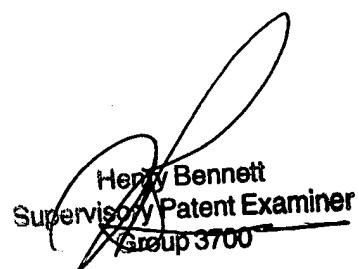
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AFD
March 14, 2006



Henry Bennett
Supervisory Patent Examiner
Group 3700